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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 JEFFREY L. DRYDEN,

8 Plaintiff,

9 v.

10 PHILIP BURNS, et al.,

11 Defendants.
12

Case No. 2:15-CV-00094-KJD-VCF

13
14 **ORDER**

15 Presently before the Court is Defendants' Motion to Dismiss (#8) Plaintiff's first
16 amended complaint. Plaintiff filed a Motion to Remand (#12) and Motion for Payment of Costs
and Fees (#13). Defendants filed a response in opposition (#16).

17 I. Background

18 Jeffrey Dryden, a *pro se* plaintiff, was employed as a part-time student worker at
19 UNLV's Student Recreation and Wellness Center (#8; #1, Ex. A). Plaintiff contends that
20 Defendants' actions led to his termination. Id. In an amended complaint, Plaintiff alleges (1) age
21 discrimination, (2) religious discrimination, (3) slander per se, (4) negligence, and (5) intentional
22 infliction of emotional distress (#1, Ex. A). Defendants removed the case from the Eighth
23 Judicial District Court of Nevada (#1). The parties then filed the present motions.

24 II. Analysis

25 A. Defendants' Motion to Dismiss and Plaintiff's Motion to Remand

26 Defendants assert that Plaintiff's allegations are merely a recital of his respective causes

1 of action. Defendants also assert that Plaintiff's claims lack factual support and move to dismiss
2 Plaintiff's amended complaint. Plaintiff contends that Defendants' motion to dismiss should be
3 denied because his amended complaint did not assert a federal claim, and as such, the case
4 should be remanded to state court.

5 Here, Plaintiff never filed a formal response to Defendants' motion to dismiss. However,
6 the Court has an obligation to construe the pleadings of a *pro se* litigant liberally. See Akhtar v.
7 Mesa, 698 F.3d 1202, 1212 (9th Cir. 2012). The Court construes Plaintiff's motion to remand as
8 a partial response to Defendants' motion to dismiss. Plaintiff does not contest dismissal of the
9 alleged federal claims and, in fact, rejects Defendants' assertion that a federal action based on
10 Title VII and the ADEA appears in his amended complaint (#12, p. 9-10). Accordingly, the
11 Court dismisses Plaintiff's federal claims without prejudice.

12 The remaining claims of (1) age and religious discrimination in violation of NRS
13 613.330, (2) slander per se, (3) negligence, and (4) intentional infliction of emotional distress rest
14 upon state law. The Court has supplemental jurisdiction over Plaintiff's pendent claims;
15 however, a court may decline to exercise supplemental jurisdiction once all claims over which it
16 has original jurisdiction have been dismissed. See 28 U.S.C § 1367(a), (c). Moreover, "[w]here
17 doubt regarding the right to removal exists, a case should be remanded to state court." Matheson
18 v. Progressive Specialty Ins. Co., 319 F.3d 1089, 1090 (9th Cir. 2003). Defendants' request for
19 judicial notice of EEOC documents to aid in the interpretation of Plaintiff's amended complaint
20 highlights the existence of doubt as to the propriety of removal based on federal question
21 jurisdiction (#8, p. 8-9). Accordingly, the Court declines to exercise supplemental jurisdiction
22 and remands the remaining claims to state court.

23 B. Plaintiff's Motion for Attorney's Fees and Costs

24 Plaintiff also moves for attorney's fees and costs pursuant to 28 U.S.C. § 1447(c).
25 Plaintiff alleges that Defendants improperly removed the case from state court and, as a
26 consequence, Plaintiff should be awarded fees. "Absent unusual circumstances, courts may

1 award attorney's fees ...only where the moving party lacked an objectively reasonable basis for
2 seeking removal." Martin v. Franklin Capital Corp., 546 U.S. 132, 140-141 (2005). Here, an
3 award of fees is not warranted. Plaintiff failed to allege whether the age and religious
4 discrimination claims in his amended complaint arose under state or federal law. Additionally,
5 Plaintiff's inclusion of the EEOC's 'right to sue letter' (#1, Ex. A at ¶ 17) in the jurisdictional
6 statement of his amended complaint created a colorable ambiguity. Accordingly, the Court
7 denies Plaintiff's motion for attorney's fees.

8 III. Conclusion

9 Accordingly, **IT IS HEREBY ORDERED** that Defendants' Motion to Dismiss (#8)
10 Plaintiff's First Amended Complaint is **GRANTED IN PART** as to Plaintiff's federal claims,
11 and **DENIED IN PART** as to Plaintiffs' claims arising under state law;

12 **IT IS FURTHER ORDERED** that Plaintiff's Motion to Remand (#12) is **GRANTED**;

13 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Attorney's Fees and Costs
14 (#13) is **DENIED**.

15 DATED this 2nd day of July 2015.

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19 Kent J. Dawson
20 United States District Judge
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